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In the Supreme Court of the United States

October Term, 1932.

No. 587.

CONSOLIDATED TEXTILE CORPORATION,
Appellant,

vs.

JOHN J. GREGORY, Judge of the Circuit Court of Milwaukee County,
Respondent.

On Appeal from the Supreme Court of the State of Wisconsin.

BRIEF FOR RESPONDENT.

GOLD AND McCANN,
Attorneys for Respondent.

WALTER L. GOLD,
RAY T. McCANN,
MORRIS KARON,
Of Counsel.

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In the Supreme Court of the United States

October Term, 1932.

No. 587.

CONSOLIDATED TEXTILE CORPORATION,
Appellant,

vs.

JOHN J. GREGORY, Judge of the Circuit Court of Milwaukee County,
Respondent.

BRIEF FOR RESPONDENT.

STATEMENT OF THE CASE.

A good deal of what is contained under appellant's "Statement of the Case" (Appellant's Brief, pp. 5-15) is entirely immaterial to the narrow question involved in this case. The reference to the recitations in the alternative writ of prohibition (R. 26-31) is immaterial because, as

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* Italics in this brief are ours, unless otherwise stated.

appears from an examination of the alternative writ, the recitals are merely a repetition of the claims in the appellant's petition for the alternative writ (R. 4-9). The recitals in the alternative writ do not add anything to the appellant's claims because those recitals were no adjudication of the correctness of the appellant's claims in the petition for the alternative writ. Reference to the fact that default judgment had been entered against appellant, which was vacated to give appellant an opportunity to plead, is immaterial. Likewise is the reference to the fact that respondent had moved to quash the alternative writ before making his return. The motion to quash was withdrawn by stipulation of appellant and respondent and the case was heard on appellant's demurrer to the return. The statement on page 8 of Appellant's Brief that the complainant, Katherine Gold, claimed in her complaint that upon default in payment of interest on a bond the bondholder "may always declare due the principal thereof," is without foundation. That is not the allegation of the complaint.

The facts in this case are practically undisputed. Katherine Gold, a citizen and resident of Milwaukee, Wisconsin, commenced an action in the Circuit Court of Milwaukee County, Wisconsin, against appellant, Consolidated Textile Corporation, on January 14, 1932, for the recovery of $2500 and interest, due her from appellant on negotiable bonds sold to her by appellant (R. 9-12). Service was made upon appellant by serving the summons and complaint upon Mr. Rupprecht, president of the appellant corporation, while he was in Milwaukee, Wisconsin, on his corporation's business (R. 15-16). Appellant appeared specially in the Circuit Court and, on Mr. Rupprecht's affidavit, moved to set aside the service (R. 12-16). The motion was heard by the Circuit Court of Milwaukee County,

Wisconsin, Honorable John J. Gregory judge presiding, on the affidavits of Mr. Rupprecht (R. 12-16), Mr. Gold (R. 17-22), and Mr. Karon (R. 23). The motion was denied and an order was entered denying the motion (R. 24). Appellant then petitioned the Supreme Court of Wisconsin for an alternative writ of prohibition to restrain Judge Gregory from further proceeding in the Katherine Gold action against appellant (R. 4-9). The Supreme Court of Wisconsin granted an alternative writ (R. 26), commanding Judge Gregory to show cause why he should not be restrained from further proceeding in that action, and Judge Gregory made his return to the alternative writ (R. 32-35), which return Katherine Gold adopted (R. 36).

It is true, as stated in Mr. Rupprecht's affidavit (R. 13-14), that Katherine Gold and six other Wisconsin bondholders of appellant corporation transferred their interest coupons amounting to $368 which matured December 1, 1930 on appellant's bonds, to one Edythe H. Stegeman of New York, who commenced an action in New York on such coupons. These seven Wisconsin bondholders retained the bonds and subsequent interest coupons. When a motion for summary judgment was granted in favor of Stegeman in the New York action, Mr. Rupprecht was sent by his corporation to Wisconsin to see Mr. Gold, the attorney for the seven Wisconsin bondholders, for the purpose of somehow disposing of the claims of the Wisconsin bondholders against the corporation—Mr. Rupprecht claiming in his affidavit (R. 15) he was sent to persuade the Wisconsin bondholders to withhold entry of the judgment in the New York action and to deposit their bonds with the corporation's committee.

In his return to the alternative writ (R. 32-35), Judge Gregory, the circuit judge, stated the ultimate facts as he found them with reference to the service of process upon

appellant's president when he came to Wisconsin. The material portions of the findings in the return are as follows:

(a) That Mr. Rupprecht, president of Consolidated Textile Corporation, was sent by the corporation to Wisconsin to attempt to settle a controversy between the corporation and seven Wisconsin bondholders, who held the corporation's bonds in the sum of over $15,000, upon which the corporation defaulted, with Mr. Gold, their attorney, and that Mr. Rupprecht insisted, against the objection of Mr. Gold, upon coming to Wisconsin, and that at the time of service of process upon him, Mr. Rupprecht was in Wisconsin on the business of the corporation; that he was then engaged in conducting business of the corporation in Wisconsin; that he told Mr. Gold that he was then also in Wisconsin on the business of his corporation with several of its Wisconsin customers; and that the appellant corporation had been doing business in Wisconsin through a wholly owned and controlled subsidiary corporation (R. 34, 35).

(b) Appellant's claim that its president was enticed into the State of Wisconsin was untrue, and that claim was withdrawn by appellant in open court upon the argument of the motion to set aside the service of process; that the affidavits of Mr. Gold and Mr. Karon were true (R. 34).

(Stipulation, R. 36)

Appellant demurred to the return and after hearing the case on the merits, the Supreme Court of Wisconsin overruled the demurrer and denied the writ (R. 37), and filed an opinion (R. 38-44).

Summary of Argument.

I.

Judge Gregory's Return to the Alternative Writ of Prohibition Stands Admitted and Cannot Be Impeached by Appellant.

By demurring to Judge Gregory's return appellant admitted the allegations thereof under the Wisconsin Procedure.

The return cannot be questioned in this court because it was not challenged in the assignment of errors.

Rule 27 (Par. 4) of United States Supreme Court rules.

Paraiso vs. United States, 207 U. S. 368, 28 Sup. Ct. 127 (syl. 4);

Wood vs. Wilbert's Sons S. & L. Co., 226 U. S. 384, 33 Sup. Ct. 125;

Behn Meyer & Co. vs. Campbell, 205 U. S. 403, 27 Sup. Ct. 502.

Judge Gregory's return is supported by the affidavits and the reasonable inferences to be drawn therefrom.

II.

A Single Transaction in Wisconsin Constitutes Conducting Business Within the States Under the Wisconsin Process Service Statute so as to Make a Foreign Corporation Amenable to Service of Process in Wisconsin.

It is the settled rule in Wisconsin that a single transaction in the state by a foreign corporation

through an authorized officer constitutes "conducting any business" in the state within the meaning of the process service statute.

Fond du Lac C. & B. Co. vs. Henningsen Produce Co., 141 Wis. 70, 123 N. W. 640;

Minneapolis Threshing Mach. Co. vs. Ashauer, 142 Wis. 646, 649, 126 N. W. 113.

It is also the settled rule in Wisconsin that a single contract or transaction within the state by an unlicensed foreign corporation comes within the prohibition of the state licensing statute.

Southwestern Slate Co. vs. Stephens, 139 Wis. 616, 120 N. W. 408;

Duluth Music Co. vs. Clancy, 139 Wis. 189, 120 N. W. 854;

Allen vs. Milwaukee, 128 Wis. 678, 106 N. W. 1099;

Sprout Waldron & Co. vs. Amery M. Co., 162 Wis. 279, 156 N. W. 158;

First Wisconsin Trust Company vs. Munday, 168 Wis. 31, 168 N. W. 393;

Phoenix Nursery Co. vs. Trostel, 166 Wis. 215, 164 N. W. 995;

State ex rel Rubber Co. vs. Gregory, 205 Wis. 189, 236 N. W. 524.

The construction placed upon the Wisconsin service statute by the Wisconsin court must be accepted by the United States Supreme Court on review as though that construction had been specifically expressed in the statute.

Quong Ham Wah Co. vs. Industrial Commission, 255 U. S. 445, 41 Sup. Ct. 373;

Supreme Lodge vs. Meyer, 265 U. S. 30, 44 Sup. Ct. 432;

Pennsylvania Fire Ins. Co. vs. Gold Issue M & M Co., 243 U. S. 93, 37 Sup. Ct. 344.

III.

By Sending Its President to Wisconsin to Attempt to Settle a Number of Claims Against It, or to Accomplish a Result in Connection With the Matter Sued on, Appellant Corporation Became Amenable to Service of Process in Wisconsin.

The ruling of the Wisconsin Supreme Court in the instant case is merely in accord with the well settled Wisconsin rule.

IV.

Service Under the Wisconsin Statute on an Authorized Officer of a Foreign Corporation Who Comes Into the State to Settle or Deal With the Matter Sued on Does Not Violate Due Process of Law.

The states have great latitude in defining what constitutes doing business by foreign corporations within their borders for the purpose of making such corporations amenable to the process of their courts.

Green vs. Chicago, etc., R. Co., 205 U. S. 530, 27 Sup. Ct. 595, 596;

International Harvester Co. vs. Kentucky, 234 U. S. 579, 34 Sup. Ct. 944, 945;

Barrow S. S. Co. vs. Kane, 170 U. S. 100, 18 Sup. Ct. 526, 528.

Whether a foreign corporation is doing business within a state so as to be subject to suit therein depends on the facts of each particular case, which facts include the language of the process service statute, as well as the acts constituting the doing of business.

International Harvester Co. vs. Kentucky, 234 U. S. 579, 34 Sup. Ct. 944, 945;

St. Louis S. W. R. Co. vs. Alexander, 237 U. S. 218, 33 Sup. Ct. 245, 247;

State, ex rel P. R. Co. vs. Circuit Court, 178 Wis. 648, 656, 190 N. W. 366;

Tetley, etc., vs. Rock Falls Mfg. Co., 176 Wis. 400, 403, 187 N. W. 204.

The purpose of a process service statute of the type involved in this case is to insure the foreign corporation will receive reasonable notice of the commencement of the action through an authorized representative in the state on the business of the corporation.

Denver R. G. R. Co. vs. Roller, 100 Fed. 738, 741;

Tauza vs. Susquehanna Coal Co., 220 N. Y. 259, 115 N. E. 915, 918.

There is no constitutional objection to making a single transaction constitute "doing business"; the extent of the business required is for the state to determine.

Chattanooga Nat. B. & L. Assn. vs. Denson, 189 U. S. 408, 23 Sup. Ct. 630.

The modern tendency is to put foreign corporations upon the same footing as natural persons in regard to jurisdiction of suits by or against them in foreign jurisdictions.

Barrow S. S. Co. vs. Kane, 170 U. S. 100, 18 Sup. Ct. 526, 528.

Service based on a single transaction within a state under a similar state service statute was sustained by this court, the inferior federal courts, and other state courts of last resort.

Commercial Mut. Acc. Co. vs. Davis, 213 U. S. 245, 29 Sup. Ct. 445, 447-8;

Conn. Mut. Life Ins. Co. vs. Spratley, 172 U. S. 602, 19 Sup. Ct. 308, 312;

Meade Fibre Co. vs. Varn, 3 Fed. (2d) 520 (C. C. A., 4th Cir., 1925, certiorari denied 269 U. S. 564, 46 S. Ct. 23);

Premo Specialty Mfg. Co. vs. Jersey Creme Co., 200 Fed. 352 (C. C. A., 9th Cir., 1912);

Dungan Hood & Co. vs. Bally, 271 Fed. 517 (D. C. Pa., 1921);

Brush Creek C. & M. Co. vs. Morgan-Gardner El. Co., 136 Fed. 505 (C. C. Mo., 1905);

New Haven P. & B. Co. vs. Downington M. Co., 130 Fed. 605 (C. C. Conn., 1904);

Houston vs. Filer & S. Co., 85 Fed. 757 (C. C. Ill., 1989);

A. Harvey's Sons Mfg. Co. vs. Sterling M. Co., 225 N. W. 538 (Mich., 1929);

St. Mary's Oil Engine Co. vs. Jackson Ice & Fuel Co., 138 So. 834 (Ala., 1931);

Abbeville Electric L. & P. Co. vs. Western El. S. Co., 61 S. C. 361, 39 S. E. 559.

The validity of statutes permitting service of process on nonresident motorists by delivery of process to the State Registrar and mailing a copy to the motorists (*Hess vs. Pawlowski,* 274 U. S. 352, 47 Sup. Ct. 632) sustains the service in this case.

Appellant's argument that a single transaction is not sufficient to sustain service is based on a line of federal cases which are entirely inapplicable because those cases involved the construction of the service statute and not its constitutionality. This distinction is recognized by the cases decided by this court.

V.

The Fact That the Cause of Action May Have Arisen Out of a Transaction Outside the State Does Not Affect the State's Jurisdiction.

This rule is supported by the great weight of authority (see scores of cases cited in *30 A. L. R. 258*, including many United States Supreme Court decisions cited infra, p. 40).

Appellant's contention that a state may not take jurisdiction of a cause of action arising outside of the state is based upon the misconception of the cases appellant cites.

VI.

A Foreign Corporation Is Amenable to Service of Process by Service on Its Officer Within the State, Where It Is Doing Business Within the State by a Subsidiary Corporation.

It is unnecessary to determine this question in this case, but there is no constitutional objection to permitting service of process upon an officer of a parent company who comes into the state on the parent company's business when the parent company is doing business in the state through the agency of a wholly owned and controlled subsidiary corporation.

Argument.

I.

Judge Gregory's Return to the Alternative Writ of Prohibition Stands Admitted and Cannot Be Impeached by Appellant.

Appellant seeks to attack that part of Judge Gregory's return to the alternative writ of prohibition (Appellant's Brief, pp. 30-34) wherein the judge found that Mr. Ruppprecht came to Wisconsin to settle the controversy between appellant corporation and the seven Wisconsin bondholders. But appellant cannot raise that question for a number of reasons. In the first place, by demurring to the return in the state Supreme Court, appellant admitted the allegations of the return, regardless whether the allegations are fully supported by the affidavits. If appellant was dissatisfied with the return or desired to take any issue with it, it had the privilege, under the Wisconsin procedure, of taking issue with the return and having the issue tried. Under the Wisconsin procedure when a party sues out an alternative writ of prohibition in the state Supreme Court, the alternative writ constitutes a complaint and the return constitutes the answer and if there is an issue of fact, it may be tried. The Wisconsin statutes provide that in case there are any issues of fact upon a proceeding instituted in the Supreme Court for a writ of prohibition, such issues of fact may be tried in the usual way as any personal actions. *Wisconsin Statutes, Sections 293.03, 293.08, 293.10, 293.12* (found in the official printed edition of the Wisconsin Statutes for the year 1931 at pp. 2129, 2130). The result is that the return of Judge Gregory is like an answer in an ordi-

nary case and a demurrer thereto admits the allegations thereof.

Secondly, Judge Gregory's return cannot be questioned in this court because the return was not challenged in the assignment of errors (R. 2-3) and under Rule 27 (paragraph 4) of this court an error not specified will be disregarded. Rule 27 (paragraph 4) refers to the necessity of assignments of errors required by Section 997 of the Revised Statutes *(28 U. S. C. A., Section 862)*. That statute refers to a writ of error, but by *28 U. S. C. A., Section 861b* the requirement of assignment of errors is extended to appeal which was substituted for the writ of error. This court will not review an alleged error which has not been raised in the assignment of errors.

Paraiso vs. United States, 207 U. S. 368, 28 Sup. Ct. 127 (syl. 4).

Wood vs. Wilbert's Sons S & L Co., 226 U. S. 384, 33 Sup. Ct. 125.

Behn Meyer & Co. vs. Campbell, 205 U. S. 403, 27 Sup. Ct. 502.

Furthermore, Judge Gregory's return is supported by the affidavits of Mr. Rupprecht and Mr. Gold and the reasonable inferences to be drawn from those affidavits. Throughout its brief the appellant argues that Mr. Rupprecht came all the way from New York to Milwaukee merely for the purpose of preventing the entry of judgment on the $368 Stegeman action in New York. Appellant's third and fourth assignment of errors (R. 3) admit Mr. Rupprecht came to Wisconsin to "compromise" the New York action; and Mr. Rupprecht admits in his own affidavit that he came not only for the prupose of compromising the New York action but to attempt to persuade

the Wisconsin bondholders to deposit their bonds with appellant's committee (R. 15). The claim on page 33 of appellant's brief, that "Mr. Rupprecht's solicitation of the deposit of the bonds with the committee was primarily in its behalf," insinuating that in that respect he was not acting for appellant corporation, is contrary to the entire record and the admissions in Mr. Rupprecht's own affidavit (R. 14-15). The purpose of appellant in sending Mr. Rupprecht to Wisconsin was to have him somehow adjust its controversy with the Wisconsin bondholders on the principal and unpaid interest on their bonds, totalling over $15,000. Settlement of the controversy with the Wisconsin bondholders does not necessarily mean payment. Any satisfactory disposition of their claims so the Wisconsin bondholders would not press or sue the appellant corporation for payment of the defaulted bonds would be classed as a settlement, and that is exactly what appellant corporation sent Mr. Rupprecht to Milwaukee to accomplish.

In any event whether Mr. Rupprecht came to Wisconsin to settle or compromise the claims of all seven Wisconsin bondholders or, merely, as Mr. Rupprecht claims in his affidavit (R. 15), to persuade them against entry of judgment in the New York action and to deposit their bonds with appellant's committee, is immaterial. The fact remains that Mr. Rupprecht was sent to Wisconsin by his corporation on the corporation's business to attempt to accomplish a result in connection with the very subject matter sued on and which would be very beneficial to the corporation. The Wisconsin actions were commenced on the claims concerning which Mr. Rupprecht came to Wisconsin. Even if he had no other business in Wisconsin, Mr. Rupprecht came to Wisconsin on the corporation's

business which, as he admits in his affidavit (R. 14), was very serious and important to the appellant corporation.

II.

A Single Transaction in Wisconsin Constitutes "Conducting Business" Within the State Under the Wisconsin Process Service Statute So As To Make a Foreign Corporation Amenable to Service of Process in Wisconsin.

The Wisconsin statute regulating service of process upon foreign corporations in Wisconsin is *Wis. Stats., Section 262.09* (official printed edition of the Wisconsin Statutes for the year 1931, pp. 1970-1). The material portions of the statute are as follows:

> "*262.09 Service on Corporations.* Actions against corporations shall be commenced in the same manner as personal actions against natural persons. The summons and the accompanying complaint or notice aforesaid shall be served, and such service held of the same effect as personal service on a natural person, by delivering a copy thereof as follows:
>
> * * *
>
> "(13) If against any other foreign corporation, to any such officer being within the state, or to any agent having charge of or *conducting any business therefor in this state,* or any trustee or assignee of such corporation, or upon the secretary of state, as provided in Section 226.02. But such service can be made upon a foreign corporation only either when it has property within the state or the cause of action arose therein, or the cause of action exists

in favor of a resident of the state, and upon the secretary of state only when the cause of action arises out of business transacted in this state or when the defendant has property therein."

The words "such officer" in *subdivision 13 of Section 262.09* refer to the officers enumerated in *Wisconsin Statutes, Section 262.09(10),* which enumerates the president, vice-president, secretary, treasurer, etc. as the officers to whom copies of process may be delivered.

It has been the settled rule in Wisconsin since the decision in *Fond du Lac C. & B. Co. vs. Henningsen Produce Co.,* 141 Wis. 70, 123 N. W. 640 (1909), that a single transaction by an unlicensed foreign corporation within the State of Wisconsin by an authorized officer constitutes "conducting any business" in the state within the meaning of *Wis. Stats., Section 262.09(13)* above quoted, and makes the corporation amenable to service of process in Wisconsin. In that case it was held that service upon the secretary of an unlicensed foreign corporation who came to Wisconsin for the single purpose of attempting to settle the claim sued on against the corporation, was valid, and that the service under the statute satisfies the requirements of due process of law, the officer's presence on the business of the corporation being the presence of the corporation within the state. In that case the court said *(141 Wis. 73):*

"A corporation ordinarily acts and moves in the person of some individual, and when any individual, officer, or agent is, within the authority committed to him, performing an act of the corporation, the latter must be deemed present physically in the per-

> son exercising its powers. * * * In other words, Henningsen at that time and for that definite purpose was the corporation, which, therefore, was present in this state. Hence there is no obstacle in the inherent limitations on the powers of the state, or in any prohibitions of the federal constitution, to the acquisition of jurisdiction by our courts by personal service of their process on the defendant present within our borders."

In *Minneapolis Threshing Mach. Co. vs. Ashauer,* 142 Wis. 646, 649, 126 N. W. 113 the Wisconsin court held that *Section 262.09(13)*

> "indicates a policy of broad liberality in enabling personal jurisdiction over foreign corporations where the subject matter is properly within the jurisdiction of our courts";

and held that the statute is valid and satisfies the requirements of due process of law.

By the foregoing cases Wisconsin has been definitely committed to the doctrine that a single transaction in the state by a foreign corporation constitutes "conducting any business" within the state under *Section 262.09(13)* so as to subject the foreign corporation to the service of process in Wisconsin. This rule is in accord with the long established rule in Wisconsin that a single contract or transaction constitutes a violation of the licensing statute. *Wis. Stats., Section 226.02* (official printed edition of the Wisconsin Statutes for the year 1932, page 1846.) That section provides that no foreign corporation shall "transact business" in Wisconsin until it shall have been licensed

therein. *Wisconsin Statutes, Section 226.02(9) provides* that every contract made by or on behalf of an unlicensed corporation within the state shall be void. The Wisconsin Supreme Court has uniformly held that a single contract or transaction within the state of Wisconsin by an unlicensed foreign corporation comes within the prohibition of *Section 226.02.*

Southwestern Slate Co. vs. Stephens, 139 Wis. 616, 120 N. W. 408.

Duluth Music Co. vs. Clancy, 139 Wis. 189, 120 N. W. 854.

Alien vs. Milwaukee, 128 Wis. 678, 106 N. W. 1099.

Sprout Waldron & Co. vs. Amery M. Co., 162 Wis. 279, 156 N. W. 158.

First Wisconsin Trust Company vs. Munday, 168 Wis. 31, 168 N. W. 393.

Phoenix Nursery Co. vs. Trostel, 166 Wis. 215, 164 N. W. 995.

State ex rel Rubber Co. vs. Gregory, 205 Wis. 189, 236 N. W. 524.

In sustaining the service on appellant corporation in the instant case, the Wisconsin Supreme Court followed its rulings in the earlier cases and reaffirmed the Wisconsin rule that a single transaction in the state by a foreign corporation constitutes "conducting any business" within the state within the process service statute. Such being the construction placed upon the Wisconsin statute by the highest court of the state, that construcion must be accepted by the United States Supreme Court on review, as though it had been specifically expressed in the statute.

Quong Ham Wah Co. vs. Industrial Commission, 255 U. S. 445, 41 Sup. Ct. 373.

Supreme Lodge vs. Meyer, 265 U. S. 30, 44 Sup. Ct. 432; and many cases cited in note 72 to 28 U. S. C. A., Sec. 344.

Hence this court must accept the construction of the Wisconsin process service statute as though the statute specifically authorized service on Mr. Rupprecht when he came to Wisconsin in relation to the matter sued on, under the facts here involved. Even though this court might consider the Wisconsin Supreme Court's construction of the Wisconsin statute broader than the language of the statute appeared to warrant, or even that the construction is erroneous, that does not constitute a denial of due process of law and the construction is binding upon the federal courts.

Pennsylvania Fire Ins. Co. vs. Gold Issue M. & M. Co., 243 U. S. 93, 37 Sup. Ct. 344.

III.

By Sending Its President to Wisconsin to Attempt to Settle a Number of Claims Against It, or to Accomplish a Result in Connection With the Matter Sued On, Appellant Corporation Became Amenable to Service of Process in Wisconsin.

The Supreme Court of Wisconsin concluded (opinion, R. 38-44) that by sending its president to Wisconsin under the circumstances and facts already stated, appellant was present and conducting business in Wisconsin through the presence of its president and became amenable to service of process in Wisconsin under the service statute above quoted (page 14, supra). Whether Mr. Rupprecht came

to Wisconsin to settle or compromise the claims of all seven Wisconsin bondholders, or, merely, as Mr. Rupprecht claims in his affidavit (R. 15), to persuade them against entry of judgment in the New York action and to deposit their bonds with appellant's committee, is immaterial. The fact remains that Mr. Rupprecht was sent to Wisconsin by his corporation on the corporation's business to attempt to accomplish a result in connection with the very subject matter sued on and which would be very beneficial to the corporation. The Wisconsin Supreme Court construed his activities in Wisconsin as coming within the Wisconsin process service statute, *Wis. Stats., Section 262.09(13)* as constituting "*conducting any business*" within the meaning of that statute, and that appellant corporation was physically present in the state of Wisconsin when its president came here on that mission, which was the corporation's business. The plaintiff is a citizen and resident of the State of Wisconsin, the person served was an officer of the defendant corporation, and at the time of service he was "conducting any business" for his corporation. Hence the service was made as required by the Wisconsin process service statute. Even disregarding the business Mr. Rupprecht had with his corporation's customers in Wisconsin, his coming to Wisconsin on the single transaction for his corporation was sufficient to bring the corporation within the state so as to subject it to the jurisdiction of Wisconsin courts under the State Supreme Court's construction of the statute.

It seems to us that the Wisconsin Supreme Court's reasoning is persuasive that the state court's taking jurisdiction over appellant corporation is not subversive of due process of law. In its opinion, the Wisconsin Supreme

Court points out the distinction under the Wisconsin statute between service upon an officer and service upon an agent (R. 39-40):

> "The validity of the service on a foreign corporation by serving process on an agent or secretary of state may depend on a showing of a continuous course of business, while service upon its president or other officer designated by statute through and by whom the corporation has entered the state for a special and for its own peculiar purpose, even though it amounts to a single transaction, may be perfectly good. It is perceived that the statute does not constitute a single transaction of an isolated nature a sufficient disclosure of the corporate presence to support a service on an agent or secretary of state, Penn Collieries vs. McKeever, 183 N. Y. 98, 75 N. E. 935, 2 L. R. A. n. s. 127, while it does provide for such service on the president or other proper officer if in the state for the purposes of a corporation, when the cause of action exists in favor of a resident of the state and arises out of the matter, to control which the corporation has come within the state. Under one mode of service, for the purpose of discovering the presence of the corporation, the inquiry involves the extent of business done, under the other we are concerned only with the question as to whether the corporation has so acted as to manifest its presence in the person of its officers to the extent that we may say, it was here at the time and subject to service of process."

Again the Wisconsin court said (R. 40):

"*It is conceded that the president of the corporation came into this state in an attempt to accomplish a result in connection with the matter sued on which would be beneficial to the defendant in that action* because of the emergency in which it found itself after its default on its bonds. A foreign corporation is present in this state when an officer thereof, vested with authority, is here transacting business for it. The corporation under such circumstances is not merely represented for its own purpose, but it is actually here, and it must accept the plain and unavoidable consequence of being held to be within the jurisdiction of our courts."

(R. 41):

"* * * *here the petitioner deliberately entered the state for the purpose of negotiating with reference to the very matter out of which the suit arises.*"

(R. 42-43):

"In the nature of things it (a corporation) must act through persons who represent it. There is just as definitely a group will and ability to form a plan or intention to act as is found in an individual. In order to avoid confusion and to prevent imposition the corporation's domicile and the place where it may be said to be found are fixed as definitely as can be and at the same time prevent undue advantage and injustice. *The effect of our legislation with relation to jurisdiction over foreign corporations amounts to this, a corporation is found within the state when its president or other chief officer, vice-*

president, secretary, cashier, treasurer, director or managing agent is within the state and conducting business for such corporation; it is here for the purposes relating to the business it has come to transact. Had the business transacted been that of Mr. Rupprecht and had he been found in the state of Wisconsin, certainly service could have been made upon him. The only way the corporation whose business he was authorized to transact could act in relation thereto was by doing so by and through its representative. He had authority to speak on behalf of the company, for the time being the company was manifesting its presence in his person and acts, it was doing its business here in Wisconsin and protecting its interests through him. As an individual Rupprecht might have come into the state without bringing the corporation with him, but as an officer coming here by direction of the corporation to manage and do the particular business of the corporation, he did bring the corporation with him. To hesitate so to hold is making a question of a patent fact. Fond du Lac C. & B. Co. vs. Henningsen, 141 Wis. 70; Premo Specialty Mfg. Co. vs. Jersey Creme Co., 280 Fed. 352; 43 L. R. A. (n. s.) 1015."

In its opinion in the instant case the Supreme Court of Wisconsin considered (R. 43) that its ruling was in accord with *Commercial Mut. Acc. Co. vs. Davis,* 213 U. S. 245, 29 Sup. Ct. 446.

IV.

Service Under the Wisconsin Statute on An Authorized Officer of a Foreign Corporation Who Comes Into the State to Settle or Deal With the Matter Sued on Does Not Violate Due Process of Law.

There is no merit in appellant's claim that the Wisconsin process service statute is unconstitutional and that appellant has been denied due process of law by the state court's ruling sustaining the service. The due process clause of the federal constitution has not fixed the amount of business a foreign corporation must do in a state in order to be amenable to the process of its courts. This court has held that the states have great latitude in defining what constitutes "doing business" by foreign corporations within their borders for the purpose of making such corporations amenable to the process of their courts.

Green vs. Chicago, etc. R. Co., 205 U. S. 530, 27 Sup. Ct. 595, 596.

International Harvester Co. vs. Kentucky, 234 U. S. 579, 34 Sup. Ct. 944, 945.

The constant tendency of judicial decisions in modern times has been to allow the states greater latitude in taking jurisdiction over foreign corporations. *Barrow S. S. Co. vs. Kane*, 170 U. S. 100, 18 Sup. Ct. 526, 528.

It is well settled by federal as well as state decisions that the determination of the question whether a foreign corporation is doing business within a state so as to be subject to suit therein depends on the facts of each particular case.

International Harvester Co. vs. Kentucky, 234 U. S. 579, 34 Sup. Ct. 944, 945.

St. Louis S. W. R. Co. vs. Alexander, 237 U. S. 218, 33 Sup. Ct. 245, 247.

State, ex rel P. R. Co. vs. Circuit Court, 178 Wis. 648, 656, 190 N. W. 366.

Tetley, etc. vs. Rock Falls Mfg. Co., 176 Wis. 400, 403, 187 N. W. 204.

Of course, the facts of each case include not only the acts constituting the doing business, but also the language of the process service statute.

The federal courts recognize that it is the character and power of the one served as the agent of the corporation which is the test of the right to acquire jurisdiction over the corporation. Due process merely prohibits the states from extending their authority beyond their jurisdiction so as to condemn the resident of another state only when neither his person nor his property is within the jurisdiction of the court rendering the judgment. *Riverside Cotton Mills vs. Menefee,* 237 U. S. 589, 35 Sup. Ct. 579, 581.

The purpose of process service statutes of the type involved in this case is to insure that the foreign corporation will receive reasonable notice of the commencement of the action through an authorized representative in the state on the business of the corporation and if such purpose is fulfilled, the requirements of due process are met. *Denver R. G. R. Co. vs. Roller,* 100 Fed. 738, 741 (C. C. A., 9th Cir.).

> "When a foreign corporation comes into this state, the Legislature, by virtue of its control over the law of remedies, may define the agents of the corporation on whom process may be served. Lafayette Ins. Co. vs. French, supra. If the persons named are true agents, and if their positions are such as to lead to a just presumption that notice to them will be notice to the principal, the corporation must submit.

Mut. L. Ins. Co. vs. Spratley, supra; Commercial Mut. Acc. Co. vs. Davis, supra." Cardozo, J., in *Tauza vs. Susquehanna Coal Co.*, 220 N. Y. 259, 115 N. E. 915, 918.

The rule that a single transaction within a state by a foreign corporation constitutes sufficient "conducting any business" within the state under a process service statute like Wisconsin's, as to make a corporation amenable to the courts of such state, has not been challenged by any of the federal decisions. We have been unable to find any decision, and appellant cites none, holding that it is beyond the power of the states to legislate that a single transaction shall be sufficient business within the state to make the foreign corporation amenable to the process of the courts of the state in which the transaction is done. On the contrary, this court has held that there is no constitutional objection to making a single transaction constitute "doing business" in the state under a state constitutional and statutory licensing requirement. *Chattanooga Nat. B. & L. Ass. vs. Denson,* 189 U. S. 408, 23 Sup. Ct. 630. This case is all the more persuasive in favor of the validity of the Wisconsin statute because it does not take as much activity within the state to constitute "doing business" under a process service statute as under a licensing statute.

"* * * activities insufficient to make out the transaction of business, within the meaning of those (licensing) statutes, may yet be sufficient to bring the corporation within the state so as to render it amenable to process." *Tauza vs. Susquehanna Coal Co.*, 220 N. Y. 259, 115 N. E. 915, 917.

There is no precise test of the nature or extent of the business that must be done to constitute "doing business"

in the state. *Commercial Mut. Acc. Co. vs. Davis,* 213 U. S. 245, 29 Sup. Ct. 445, 448; *Tauza vs. Susquehanna Coal Co.,* 220 N. Y. 259, 115 N. E. 915, 918. The extent of the business required is for the state to determine. *Chattanooga Nat. B. & L. Ass. vs. Denson,* 189 U. S. 408, 23 Sup. Ct. 630.

When it comes to determine whether service of process under circumstances such as are here involved is in accord with due process, it is not a question as to how much business is done in the state. The number of acts required to constitute doing business in a state may be properly considered upon *construction* of a service statute requiring a foreign corporation to be doing business in the state to be amenable to its process. But due process is not concerned with the amount of business done in the state. Due process merely requires reasonable notice of suit by service on an authorized representative within the state on the corporation's business, and an opportunity to defend. *Denver & R. G. R. Co. vs. Roller,* 100 Fed. 738, 741.

When a natural person comes into a foreign state, he carries with him all his personal liabilities and he may be served there. There is no reason why a corporation should be entitled to any greater exemption when it comes into a foreign state through an authorized officer to transact some corporate business. How can a statute, providing that a single transaction in the state by an authorized officer shall make the corporation amenable to service through such officer, be so unreasonable as to be contrary to due process, when service on an individual under the same circumstances is concededly valid?

A corporation can act only through individuals, and when any individual officer or agent is acting within the authority committed to him, he is performing an act of the corporation, and the corporation must then be deemed to be physically present through the individual exercising its

powers within the State. *St. Clair vs. Cox,* 106 U. S. 350, 1 Sup. Ct. 354, 356, 361.

"The constant tendency of judicial decisions in modern times has been in the direction of putting corporations upon the same footing as natural presons in regard to the jurisdiction of suits by or against them." *Barrow S. S. Co. vs. Kane,* 170 U. S. 100, 18 Sup. Ct. 526, 528.

This court has decided a number of times that State process service statutes like Wisconsin's were valid and not repugnant to due process and under such statutes sustained the service upon an officer or agent whom the foreign corporation sent into the State to represent it in connection with the matter sued on, even though the officer or agent went into the State for that single transaction.

Commercial Mut. Acc. Co. vs. Davis, 213 U. S. 245, 29 S. Ct. 445, 447-8.

Conn. Mut. Life Ins. Co. vs. Spratley, 172 U. S. 602, 19 S. Ct. 308, 312.

Inferior Federal courts came to the same conclusion.

Meade Fibre Co. vs. Varn, 3 Fed. (2d) 520 (C. C. A., 4th Cir., 1925, certiorari denied 269 U. S. 564, 46 S. Ct. 23).

Premo Specialty Mfg. Co. vs. Jersey Creme Co., 200 Fed. 352 (C. C. A., 9th Cir., 1912).

Dungan Hood & Co. vs. Bally, 271 Fed. 517 (D. C. Pa., 1921).

Brush Creek C & M Co. vs. Morgan-Gardner El. Co., 136 Fed. 505 (C. C. Mo., 1905).

New Haven P & B Co. vs. Downington M Co., 130 Fed. 605 (C. C. Conn., 1904).

Houston vs. Filer & S. Co., 85 Fed. 757 (C. C. Ill., 1898).

And so have State courts of last resort in addition to the Wisconsin court.

A. Harvey's Sons Mfg. Co. vs. Sterling M. Co., 225 N. W. 538 (Mich., 1929).

St. Mary's Oil Engine Co. vs. Jackson Ice & Fuel Co., 138 So. 834 (Ala., 1931).

Abbeville Electric L. & P. Co. vs. Western El. S. Co., 61 S. C. 361, 39 S. E. 559.

The rule of those cases is that whenever a corporation sends an officer or agent into the state of the plaintiff's residence and authorizes the officer to represent the corporation in a particular transaction, it voluntarily comes into the state with reference to that transaction and is amenable to suit thereon in the state.

In *Commercial Mut. Acc. Co. vs. Davis*, 213 U. S. 245, 29 Sup. Ct. 445 the state statute considered was like the Wisconsin statute. It provided that service upon a foreign corporation might be made by serving an officer, agent or employee in any county where such service might be obtained. In case of insurance corporations, the statute authorized service by delivery of a copy of the process to any person in the state who should solicit insurance for the corporation or make any contract of insurance or collect any premiums, or who should adjust or settle a loss or in any manner aid in doing either. Service was obtained by serving an agent whom the corporation sent into the state to adjust the claim. *This court held* that the service was valid and not in contravention of due process, holding that a representative of a foreign insurance company who comes into the state clothed with full authority to adjust a claim is one "who adjusts or settles a loss" within the meaning

of the statute, *although in fact the loss was not actually settled.* The court said *(29 Sup. Ct. 447-8)*:

> "It was competent for the state, keeping within lawful bounds, to designate the agent upon whom process might be served. It chose to enact a statute providing that an agent competent by authority of the company to settle and adjust losses should be competent to represent the company for the service of process. When the company sent such an agent into Missouri, by force of the statute he is presumed to represent the company for the purpose of service, and to be vested with authority in respect to such service so far as to make it known to the foreign corporation thus coming within the state and subjecting itself to its laws. * * *
>
> "It is not necessary that express authority to receive service of process be shown. The law of the state may designate an agent upon whom service may be made, if he be one sustaining such relation to the company that the state may designate him for that purpose, exercising legislative power within the lawful bounds of due process of law. This was held in effect in Connecticut Mut. L. Ins. Co. vs. Spratley, 172 U. S. 602, 43 L. ed. 569, 19 Sup. Ct. Rep. 308.
>
> "We think the state did not exceed its power and did no injustice to the corporation by requiring that, when it clothed an agent with authority to adjust or settle the loss, such agent should be competent to receive notice, for the company, of an action concerning the same."

In *Conn. Mut. Life Ins. Co. vs. Spratley,* 172 U. S. 602, 19 Sup. Ct. 308, the Tennessee statute considered provided

that any foreign corporation found doing business in the state should be subject to suit there in relation to any transactions had within the state or to any cause of action arising within the state; that any transaction with persons or concerning any property situated in the state, through any agency whatever, acting for it within the state, should be held to be doing business within the meaning of the statute; that process might be served upon any agent of the corporation found within the county where the suit is brought no matter what character of agent he may be. Plaintiff sent an agent into the state to investigate the death of the defendant's husband with authortiy to compromise the claim. While the agent was engaged in negotiation with the defendant, and after she had refused to accept his offer, he was served with process. The insurance company commenced an action after a default judgment was rendered against it, to restrain enforcement of the judgment. The Supreme Court of Tennessee held the judgment valid.

This court affirmed the state judgment, holding that since the agent on whom process was served in the case was sufficiently representative, the state court acquired jurisdiction over the corporation and the corporation was not denied due process of law. The court said (19 Sup. Ct. 312):

> "It is admitted that the person upon whom process was served was an agent of the company. Was he sufficiently representative in his character? He was sent into the state as such agent to investigate in regard to this very claim, and while there he was empowered to compromise it within certain stated terms, leaving him a certain discretion as to the amount. He was authorized to settle the claim for the amount of the reserve 'or thereabouts.' He did

> not leave his character as agent when he entered the state. On the contrary, it was as agent, and for the purpose of representing the company therein, that he entered the state, and as agent he was seeking a compromise of the claim by the authority of the company, and therein representing it. Why was he not such an agent as it would be proper to serve process upon?

Appellant recognizes that the two foregoing cases are favorable to the respondent but attempts to distinguish them by claiming (Appellant's Brief, pp. 34-37) that the rulings were not predicated on the single transaction which the agent came into the state to adjust. However, the controlling basis of the decisions was the fact that an agent was sent into the state authorized to deal with the subject matter of the suit, and that transaction alone was considered sufficient to authorize valid service. The court did not say that the absence of the additional business which the corporation had done in the state, other than by the agent sent into the state to attempt to adjust the loss, would have rendered the service invalid. Appellant seeks to further distinguish (Appellant's Brief, p. 37) those cases on the ground the defendants were insurance companies and that agents attempting to adjust insurance losses were engaged in the ordinary and usual business of their corporations while, in the instant case, the adjustment of a claim against appellant is merely incidental to its business of dealing in textiles. This type of argument strikes us as shocking. It seems to us that payment of its debts to its bondholders who furnished the appellant with the capital to carry on its business is just as important a part of its business as its textile business.

Following are some illustrative quotations from some of the other foregoing cases which sustained service on an agent sent into the state for a single transaction.

"* * * but the general manager was, for the time being, in the matter in which he was sent, the corporation, and brought to this county and district the presence of the corporation as effectually as that could be done. The corporation sending him to transact the corporate business was, within the limits of that business, itself present." *Houston vs. Filer & Stowell Co.*, 85 Fed. 757.

"Any individual may be served in any state where he is found without regard to the place of his residence. A corporation is entitled to no greater exemption. It ought to be held to be present in any state to which it sends its general officer for the transaction of its corporate business." *Brush Creek Coal & M. Co. vs. Morgan-Gardner Electric Co.*, 136 Fed. 505, 507.

"It would seem ungracious for the defendant to permit its agent to visit Connecticut concerning matters which touch one branch of a transaction, and to object to service upon such agent of a notice that the plaintiff seeks to recoup in one direction what it has lately lost in another. * * *

"It is impossible to assent to the proposition that doing business within a state means a persistent or continuous condition of doing or offering to do business, usually leading to the appointment of an agent or the establishment of an office within the state."

New Haven Pulp & Board Co. vs. Downington Mfg. Co., 130 Fed. 605, 608.

"The service of process upon an agent of a foreign corporation, who comes into the jurisdiction of the court upon the business of the corporation which is the subject of the suit in which service is made, appears to be above all other class of agents the one upon whom service should be made, in order that notice may be promptly given to the corporation, and that it may be fully advised in the premises, and we see no reason why the foreign corporation doing business within the jurisdiction under such circumstances should not be bound by such service." *Premo Specialty Mfg. Co. vs. Jersey-Creme Co.,* 200 Fed. 352, 359. (This case approves and follows the Wisconsin rule as laid down in *Fond du Lac C. & B. Co. vs. Henningsen Produce Co.,* 141 Wis. 70.)

"The object of the service of any legal process is to notify the party served of the proceeding against him, and to obtain jurisdiction of his person; and both of these objects are attained where a person, whether a nonresident or a resident of this state, has been personally served within the jurisdiction of the court where such proceeding is pending. * * * But, as we understand the decisions of the supreme court of the United States, there is no difference whether the question is as to the service of an individual nonresident and a foreign corporation, provided the service, in case of a corporation, is made upon an officer or agent of the corporation, who is acting as the representative of such

corporation at the time of service, * * * as is held in the case last cited (Insurance Co. vs. Spratley, 172 U. S. 602, 19 Sup. Ct. 308), the character of the agency depends upon the inquiry whether the agent can be regarded as the representative of the corporation in respect to the transaction out of which the suit arises. * * * For, as said by Mr. Justice Field in St. Clair vs. Cox at page 359, 106 U. S., page 362, 1 Sup. Ct., and page 226, 27 L. Ed.: While 'service upon an agent of a foreign corporation will not be deemed sufficient unless he represents the corporation in the state where such service is made, yet, if he is the representative of the corporation in the state at the time the service is made, such service would be sufficient; and this representation implies that the corporation does business or has business in the state, for the transaction of which it sends or appoints an agent there.'" *Abbeville Electric L. & P. Co. vs. Western Electrical S. Co.*, 61 S. C. 361, 39 S. E. 559, 566.

That the Wisconsin process service statute and the actual service made upon the appellant in this case, are not unreasonable, and not in derogation of due process, is apparent when it is considered that this court held that service on a non-resident motorist by delivery of process to the State Registrar and mailing a copy to the motorist, is constitutional. *Hess vs. Pawloski,* 274 U. S. 352, 47 Sup. Ct. 632.

The appellant's argument that a single transaction by a foreign corporation within the state is not sufficient, but that there must be a continuous course of business within

the state to make the corporation amenable to service of process, is based on a line of federal cases (discussed on pages 22-30, 38-41 of Appellant's Brief) which are entirely inapplicable. Those federal cases are inapplicable because in those cases which held the service invalid jurisdiction was grounded upon statutes far different from the Wisconsin statute, statutes which required the foreign corporation to be doing sufficient business so as to "be found," or "reside" within the state or district where the action was brought. The difference between the decisions in the state and federal courts upon the validity of service is based upon this difference in the service statutes. This distinction is clearly pointed out in the much cited case of *Green vs. Chicago B. & Q. R. Co.,* 205 U. S. 530, 27 Sup. Ct. 595, 596. In that case the service was held insufficient because it did not come within the purview of the federal service statute considered by the court. The court pointed out that the decision was based on the federal statute and that the cases in which a contrary conclusion was reached were state decisions which involved "*the interpretation of a state statute and the jurisdiction of the state courts.*" *The court conceded that the service would have been upheld had service been tested by the state service statute.* This distinguishing feature of the federal cases is also pointed out in a learned opinion in *Bristol vs. Brent,* 110 Pac. 356, 358, 38 Utah 58, where it is said:

> "The Supreme Court of the United States, as well as many other courts that have had occasion to pass upon the subject, have always based their decisions, to a large extent at least, upon the terms of the particular statute in question."

Again, this distinction is clearly pointed out in the late case of *Eastman Kodak Co. vs. Southern P. M. Co.,* 273 U. S. 359, 47 Sup. Ct. 400. That case holds that the amount of business to be done so that the corporation may be said to "reside" or "to be found" in the state is much more than the amount required in order to constitute "transacting business" in the state.

Likewise, the service was sustained in *St. Louis S. W. R. Co. vs. Alexander,* 227 U. S. 218, 33 Sup. Ct. 245, where in construing the process service provision under the Carmack amendment, which was much broader in scope than the general federal service statute, it was held (syllabus 3):

> "A foreign railway corporation is doing business in the state so far as the question of its amenability to service of process there is concerned, where its local representative undertakes to act for and represent it negotiating for it, and in its behalf declining to adjust a claim made against it."

The federal jurisdiction and venue statutes confer a limited jurisdiction on the federal courts and are far more limited in scope than statutes like *Wis. Stats., Section 262.09(13).* The general federal jurisdiction and venue statute is now *Judicial Code, Section 51 (28 U. S. C. A. Section 112)* which provides:

> "No civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be brought only

in the district of the residence of either the plaintiff or defendant."

Most of the federal cases refer to the requirement that to be subject to service the foreign corporation must "reside" or "be found" in the district where suit is brought. The reason the words "be found" are used in some cases is that special federal statutes regulate the service of process in special cases and allow service on foreign corporations not only where they may "reside" but also where they may "be found" (e. g. Anti-Trust Law, referred to in *Eastman* case, *supra,* and *Copyright Law),* and special acts conferring jurisdiction on the federal courts in particular cases supersede the general statute defining jurisdiction and venue in the federal courts. (See cases cited in *28 U. S. C. A., Section 112, note 32.*)

Even upon removal of a case from a state to a federal court for diversity of citizenship, the question of validity of service seems to be tested by the federal statutes.

Goldey vs. Morning News, 156 U. S. 518, 15 Sup. Ct. 559, 561.

Lowitz vs. Kimmerle, 221 Fed. 857 (C. C. A. 6th Circuit 1915, Certiorari denied, 35 Sup. Ct. 941).

Case vs. Smith & Co., 152 Fed. 730.

West vs. Cincinnati R. Co., 170 Fed. 349.

Vitkus vs. Clyde Co., 232 Fed. 288.

Now, when the distinction between the federal and state process service statutes is borne in mind, the federal cases discussed on pages 22-30, 38-41 of Appellant's Brief are entirely reconciled with state decisions sustaining service

on foreign corporations under service statutes like *Wis. Stats., Section 262.09(13).* Those cases discussed by appellant which held the service of process invalid, are inapplicable and distinguishable, because those cases were not based on due process, but either (1) upon construction of the jurisdiction of the Federal Courts under process service statutes which required the foreign corporation "to reside" or "to be found" or "to be an inhabitant" in the district, and such statutes were construed to require more than one transaction to be done in the district to make the corporation amenable to service of process there; or (2) the officer was in the State or district only on his private affairs and hence could not be deemed to represent the corporation at all. It is only when the officer served was in the state only on his private affairs that the service was held invalid as denial of due process.

The service upon a foreign corporation was set aside because the corporation was not "present" within the district and the officer served was in the district only on his private affairs in *Philadelphia & R. R. Co. vs. McKibbin,* 243 U. S. 264, 37 Sup. Ct. 280: because the corporation was "not found" in the district in *James H. Dickinson F. M. Co. vs. Harry,* 273 U. S. 119, 47 Sup. Ct. 308; because the corporation was not "present there" in *Bank of America vs. Whitney Bank,* 261 U. S. 171, 43 Sup. Ct. 311; because the corporation was not "an inhabitant" or "found" in the district as required by the federal venue statute in *Lumiere vs. Wilder,* 261 U. S. 174, 43 Sup. Ct. 312; because the corporation was not "found" nor "present" in the district in *Rosenberg Bros. Co. vs. Curtis Brown Co.,* 260 U. S. 516, 43 Sup. Ct. 170; because the corporation was not "present" in the district as required by the federal stat-

ute in *Green vs. Chicago, etc. R. Co.,* 205 U. S. 530, 27 Sup. Ct. 595, 596.

The inferior federal court cases cited on page 38 of Appellant's Brief likewise are based on the federal process service statute requiring the corporation to be "found" within the district in order to make the corporation amenable to service there.

All the aforementioned cases were cases on the *construction* of the requirements of the service statute and not its validity. Cases like *Riverside Cotton Mills vs. Menefee,* 237 U. S. 189, 35 Sup. Ct. 579, and *Conley vs. Mathieson Alkali Works,* 190 U. S. 406, 23 Sup. Ct. 728, are entirely inapplicable, becaues those cases merely held that service upon a resident director of a foreign corporation who was not doing anything for the corporation in the state and which transacted no business and had no property in the state, did not confer jurisdiction over the corporation. Likewise, *Goldey vs. Morning News,* 156 U. S. 518, 15 Sup. Ct. 559, is entirely inapplicable because the officer served was not in the state on the corporation's business and the corporation transacted no business and had no property in the state, and the service was tested by the federal service statute.

Not one of all those federal cases petitioner relies upon attempts to limit the power of the states to define what constitutes sufficient doing business in the state by an unlicensed foreign corporation to subject it to service of process in the state. None of them held that the state may not provide that one transaction within the state shall make the corporation amenable to the jurisdiction of the state.

V.

The Fact That the Cause of Action May Have Arisen Out of a Transaction Outside the State Does Not Affect the State's Jurisdiction.

Even though the cause of action of Katherine Gold and the other Wisconsin bondholders may have arisen out of transactions outside the state (appellant's contention, Appellant's Brief, pp. 40-41, but not necessarily true and not determined), that does not constitutionally prohibit the State from asserting jurisdiction over a foreign corporation coming into the State for the purpose of settling or dealing with the subject matter of a cause of action in favor of a resident of the state. In a note on this precise question in 30 *A. L. R.* 258 the annotator says:

> "By the great weight of authority the mere fact that the cause of action arose, or the transactions giving rise to it occurred, beyond the territorial limits of the state of suit, does not prevent effective service of process upon an actual agent of a foreign corporation, if the conditions of service are otherwise satisfied." (Citing scores of cases including *New England Mut. L. Ins. Co. vs. Woodworth,* 111 U. S. 138, 4 Sup. Ct. 364; *New York, etc. R. Co. vs. Estill,* 147 U. S. 591, 13 Sup. Ct. 444; *Barrow S. S. Co. vs. Kane,* 170 U. S. 100, 18 Sup. Ct. 526; *Atchison, etc. R. Co. vs. Sowers,* 213 U. S. 55, 29 Sup. Ct. 397; *Washington etc. R. Co. vs. Real Estate Trust Co.,* 238 U. S. 185, 35 Sup. Ct. 818; *Canadian, etc. R. Co. vs. Eggen,* 252 U. S. 553, 40 Sup. Ct. 402, and many inferior federal court cases and scores of

decisions of state courts of last resort and England and Canada.)

In Hunter vs. Mutual Reserve Life Ins. Co., 218 U. S. 586, 31 Sup. Ct. 127, this court held that a corporation may be doing business in a state of a kind and to an extent which will make it liable to suit by residents of that state, although immune to suit by non-residents.

The entire contention of appellant that a non-licensed foreign corporation is not subject to the jurisdiction of this state where the cause of action arises out of a transaction in another state is fallacious. That argument is based upon a misconception of the cases cited by appellant on this subject. Cases like *Old Wayne Mutual L. Ass. vs. McDonough,* 204 U. S. 8, 27 Sup. Ct. 236; *Mitchell Furniture Co. vs. Selden Co.,* 257 U. S. 213, 42 Sup. Ct. 84, and *Louisville & N. R. Co. vs. Chatters,* 279 U. S. 320, 49 Sup. Ct. 329, merely held that the implied assent of a foreign corporation transacting business in a state without complying with the statutes of the state requiring foreign corporations, as a condition of doing business in the state, to appoint some state officer as the corporation's agent for service of process in a suit against the corporation in such state, *involving business transacted in such state,* does not extend to causes of action arising outside of the state. Such cases are entirely inapplicable to the case at bar, because in those cases the service attempted to be made was not upon an actual officer of the corporation, but upon some state officer who was appointed by the state statute—an *imputed or constructive agent created by statute.* Those decisions are based upon the *limited service allowed by the statutes themselves.* The statutes in those cases, like *Wis.*

Stats., Section 262.09(13), either expressly or by local construction, authorized service upon the corporation by serving a state officer *only when the cause of action arose out of business transacted in the state, or the corporation had property in the state.* The Wisconsin Statute permits service ~~also~~ when the cause of action is in favor of a Wisconsin resident, when service can be had on an actual officer of the corporation.

This court has expressly held that even where substituted service is thus made upon an imputed or constructive agent, it may apply to causes of action arising out of transactions without the state, where the service statute expressly or by local construction authorizes service in such cases, and such statute is valid and does not violate due process.

Pennsylvania Fire Ins. Co. vs. Gold Issue, M. & M. Co., 243 U. S. 93, 37 Sup. Ct. 344.

Louisville & N. R. Co. vs. Chatters, 279 U. S. 320, 49 Sup. Ct. 329.

This limitation upon those cases is clearly pointed out in a leading case, *Lipe vs. Carolina C. & O. R. Co.,* 123 S. C. 515, 116 S. E. 101, 30 A. L. R. 248, where this question was squarely decided and it was held that an unlicensed foreign corporation doing business in the state was subject to suit therein by a resident of the state upon a cause of action arising in another state. The court said (30 *A. L. R.* 253):

> "In either case jurisdiction is made to depend upon the constructive, not the actual presence of the corporation within the state's borders, by virtue of a state statute imputing to the corporation a technical presence for the purpose of appointing a process agent or of failing to appoint one. Where jurisdiction is attributed to such constructive presence,

and is acquired by service of process upon one whose power to bind the corporation with respect to process is derived solely from a state statute imputing such authority, the jurisdiction of the state courts will not be extended to causes of action based on transactions outside of the state. And that, as we apprehend, is as far as the authority of the decisions cited and relied upon by appellant may be held to extend.

"But we are concerned here, not with the constructive presence of the defendant corporation, but with its actual presence in the state; not with the effect of service of process upon constructive agents, but upon actual agents within the jurisdiction of the court issuing the process."

The court further said (30 *A. L. R.* 254):

"The power of the state 'to make the jurisdiction over the foreign corporation wide enough to include the adjudication of transitory actions not arising in the state is not open to question. See Missouri P. R. Co. vs. Clarendon Boat Oar Co., 257 U. S. 533, 66 L. ed. 354, 42 Sup. Ct. Rep. 210; Best vs. Seaboard Air Line R. Co., 72 S. C. 482, 52 S. E. 223; 14a C. J. 1384, sec. 4100."

It is the settled rule in Wisconsin by the decision of *American Food Products Co. vs. American M. Co.,* 151 Wis. 385, 396, 138 N. W. 123, that the fact that the contract upon which the unlicensed foreign corporation was sued was made or was to be performed outside the state does not prevent effective service of process upon an actual agent of the corporation, where the other requisites of the statute were satisfied. The Wisconsin court has even gone further than that in *Eingartner vs. Illinois Steel Co.,* 94

Wis. 70, 68 N. W. 664, and *State, ex rel Smith vs. Belden*, 205 Wis. 158, 236 N. W. 542, where it was held that the courts of Wisconsin have jurisdiction to entertain a transitory action arising in another state. even though both parties are nonresidents of the state, under Article IV, Section 2 of the United States Constitution, providing that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

Hence the fact that the cause of action may have arisen out of a transaction outside of the state did not prohibit the state from taking jurisdiction.

VI.

A Foreign Corporation Is Amenable to Service of Process by Service on Its Officer Within the State Where It Is Doing Business Within the State by a Subsidiary Corporation.

Appellant argues (Appellant's Brief, pp. 48-50) that doing business in a State by a subsidiary corporation does not constitute doing of business by a parent corporation. That statement is too broad. Judge Gregory found that appellant was doing business in Wisconsin through a wholly owned and controlled subsidiary, Consolidated Selling Co. Inc., and that Mr. Rupprecht was in Wisconsin on the business of the appellant with several of its customers in Wisconsin (R. 35). Mr. Rupprecht's affidavit admits that Consolidated Selling Co. Inc. is a wholly owned and controlled subsidiary of appellant which is doing an interstate commerce business within Wisconsin (R. 7), and Judge Gregory found on the undisputed affidavit of Mr. Gold that Mr. Rupprecht stated he was in Wisconsin on the business of appellant with several of its Wisconsin customers (R. 35).

While it is not necessary to resort to the appellant's doing business in Wisconsin through its subsidiary corporation in order to sustain the service, nevertheless the appellant's selling activities in Wisconsin, through its wholly owned and controlled subsidiary, constituted "*conducting any business*" in Wisconsin, and subjected the parent corporation to service of process in Wisconsin when an officer of the parent corporation came to Wisconsin on the parent company's business.

The fact that the subsidiary corporation's business in Wisconsin was interstate in character is immaterial.

It is well settled that the business upon which service of process upon a foreign corporation may be based includes interstate as well as intrastate business. *Paulus vs. Hart-Par Co.*, 136 Wis. 601, 118 N. W. 248; *Tetley, etc., vs. Rock Falls Mfg. Co.*, 176 Wis. 400, 187 N. W. 204. Even though such business be entirely in interstate commerce. *International Harvester Co. vs. Kentucky*, 234 U. S. 579, 34 Sup. Ct. 944; *Eastman Kodak Co. vs. Southern Photo Co.*, 273 U. S. 359, 47 Sup. Ct. 400, 403.

While the mere doing of business in the state by a subsidiary corporation does not confer jurisdiction on the parent company, yet where the parent company does the business through the agency of the subsidiary company, then the parent company is doing the business in the state and becomes amenable to the service of process in the state if service can be made on an officer of the parent company who is in Wisconsin on the parent company's business, the same as if the parent company were doing business through the agency of a natural person. A corporation may do business through the agency of a subsidiary corporation just as well as through a natural agent.

The cases cited on page 49 of the Appellant's Brief do not sustain its contention. In *Cannon Mfg. Co. vs. Cudahy*,

267 U. S. 333, 45 Sup. Ct. 250; *People's Tobacco Co. vs. Amer. Tob. Co.*, 246 U. S. 79, 38 Sup. Ct. 233; and *Peterson vs. Chicago, etc. R. Co.*, 205 U. S. 364, 27 Sup. Ct. 513, the service was held invalid because the service made was not on an agent of the parent company but the agent served was only an agent of the subsidiary company, and the service statute did not authorize service by serving a copy on an agent of the subsidiary company. The *Cannon* case indicates (45 Sup. Ct. 251) that had the statute authorized service on the parent company by serving an officer of the subsidiary company, a different question would have been presented. The other cases cited on page 49 of Appellant's Brief are not applicable because either the officer served was in the state merely on his private affairs or that question was not involved.

If other activities besides the single transaction sued on are necessary to sustain jurisdiction, then the business done by appellant in Wisconsin through its wholly owned and controlled subsidiary are as much sufficient additional business to support jurisdiction as were the few additional acts in *Commercial Mut. Acc. Co. vs. Davis*, 213 U. S. 245, 29 Sup. Ct. 445 and *Conn. Mut. Life Ins. Co. vs. Spratley*, 172 U. S. 602, 19 Sup. Ct. 308.

Conclusion.

We therefore respectfully submit that there is no substantial federal question involved on this appeal; that the questions raised on this appeal have been decided a number of times against the appellant's contentions and the appeal should, therefore, be dismissed, or the judgment of the Supreme Court of the State of Wisconsin from which this appeal is taken be affirmed. Even if it is considered that there is a substantial federal question involved, we

submit that since process was served upon the president of defendant corporation while he was in Wisconsin on the corporation's business, the service was valid and authorized under the Wisconsin statute and that such service did not deny appellant due process of law. Even if the cause of action be considered as arising out of a transaction outside the state, that does not affect the jurisdiction of the state courts; and that the judgment of the Supreme Court of Wisconsin is right and should be affirmed.

Respectfully submitted,

GOLD AND McCANN,
Attorneys for Respondent.

WALTER L. GOLD,
RAY T. McCANN,
MORRIS KARON,
Of Counsel.

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CHARLES ELMO

In the Supreme Court of the United States

October Term, 1932.

No. 587.

CONSOLIDATED TEXTILE CORPORATION,
Appellant,

vs.

JOHN J. GREGORY, Judge of the Circuit Court of Milwaukee County,
Respondent.

On Appeal from the Supreme Court of the State of Wisconsin.

SUPPLEMENT TO RESPONDENT'S BRIEF.

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SUPPLEMENT TO RESPONDENT'S BRIEF.

Respondent's counsel were informed by the clerk of this court that this case would be reached for argument on February 17, 1933. We did not receive a copy of appellant's brief until February 13, 1933, although appellant served us with unpaged galley proofs of its brief on February 9, 1933. As a result, respondent's counsel were obliged to prepare the respondent's brief hastily and respondent's brief was served on appellant's counsel on February 15, 1933. Later in the same day the clerk of this court notified us that the case would not be reached for argument until the March assignment. In the haste to prepare the

*Italics herein are ours.

brief timely, we overlooked several matters which may not be serious but which we desire to supply by this supplement.

On page 11 of respondent's brief are cited *Wisconsin Statutes, Sections 293.03, 293.08, 293.10 and 293.12* (found in the official printed edition of the Wisconsin Statutes for the year 1931 at pp. 2129-2130). To permit ready reference to these statutes, we set forth herein those statutory provisions verbatim*.

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* "**293.03 Issues of fact; election cases, trial of.** (1) Issues of fact in any such proceeding instituted in the supreme court shall be tried in the circuit court of the county within which the material facts recited in the relation for the mandamus shall be alleged to have taken place or in such other county as the supreme court, for cause shown, shall, in its discretion, order, and the circuit court before which such issue of fact is ordered to be tried may try the same at a special or a general term and may summon a jury for that purpose and prescribe the manner of summoning the same. And when such writ shall be issued by any circuit court any issue of fact therein may in like manner be tried at a special or general term, and the court may summon a jury in like manner for the trial thereof."

"**293.08 Writs of prohibition, how issued.** Writs of prohibition issued out of the supreme court shall be applied for upon relation or affidavits filed in the same manner as for writs of mandamus; and if the cause shown shall appear to the court to be sufficient a writ shall be thereupon issued, which shall command the court and party to whom it shall be directed to desist and refrain from any further proceedings in the action or matter specified therein until a day therein named to be fixed by the court and the further order of such court thereon; and then to show cause why they should not be absolutely restrained from any further proceedings in such action or matter."

"**293.10 Proceedings on adoption of return.** If the party to whom such writ of prohibition shall have been directed shall, by an instrument in writing to be signed by him and annexed to such return, adopt the same return and rely

The specification of error 1 on page 15 of Appellant's Brief is deceptive in stating that appellant's president was temporarily within the state in its behalf "solely to procure the withholding of judgment in an action pending against it in another state." Appellant's third and fourth assignments of error (R. 3) admit Mr. Rupprecht (appellant's president) came to Wisconsin for the purpose of "compromising" the New York action; and Mr. Rupprecht admits in his own affidavit that he came not only for the purpose of compromising the New York action but to attempt to persuade the Wisconsin bondholders to deposit their bonds with appellant's committee (R. 15). On page 2 of Appellant's Brief in Opposition to Appellee's Motion to Dismiss or Affirm, appellant states "* * * *that the president of the appellant came to the state of Wisconsin for the purpose of settling the claims of the holders of bonds issued by the appellant; that service was made upon the president of the appellant while he was in the state of Wisconsin for the purpose of settling such claims.*" Hence, obviously the statement in appellant's first specification of error that its president was in Wisconsin "solely to procure the withholding of judgment in an action pending

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upon the matters therein contained as sufficient cause why such court should not be restrained, as mentioned in the said writ, said party shall thneeforth be deemed the defendant in such matter; and the person prosecuting such writ may take issue or demur to the matters so relied upon by such defendant; and the like proceedings shall be had for the trial of issues of law or fact joined between the parties and for the rendering of judgment thereupon as in personal actions."

"293.12 **Judgment.** The court, after hearing the proofs and allegations of the parties, shall render judgment either that a prohibition absolute, restraining the said court and party from proceeding in such action or matter, do issue, or a writ of consultation, authorizing the court and party to proceed in the action or matter in question."

against it in another state" is incorrect. Even if that were his sole purpose, there would be no constitutional objection to a state statute permitting service of process upon a corporation by service on its president, who comes into the state on a single business transaction for the corporation. But we call this to the court's attention to show that Appellant's Brief attempts to limit the visit of its president to Wisconsin to a narrower scope than he himself admitted in his own affidavit and which appellant's counsel have heretofore admitted on the record and treated as undisputed.

On page 33 of Appellant's Brief counsel contend that the Wisconsin actions "did not arise out of and were only remotely related to the business which took Mr. Rupprecht to Wisconsin." This contention is directly contrary to the assertion made by Mr. Rupprecht in his affidavit regarding the purpose of his visit to Wisconsin, for in that affidavit he says (R. 13-14):

> "That said Walter L. Gold represents as attorney the alleged owners of $9200 principal amount of the First Mortgage bonds of defendant Corporation, to-wit, Lillie Mock, Cecelia Alshuler, Crowley Co., Inc., Katherine Gold and Walter L. Gold, on whose behalf an action was commenced on January 19, 1931, in the Municipal Court in the city, county and state of New York by one Edythe H. Stegeman against the defendant Corporation to recover the interest due on said bonds on December 1, 1930."

Counsel well know that in the court below they urged that the New York action was on behalf of the Wisconsin bondholders. Now it seems that appellant's counsel feel that it will better suit appellant's purpose to assert the contrary—that the New York action was not concerned with the Wisconsin bondholders and to support this new

and opposite claim, counsel attempt to rely on the statement in Judge Gregory's return (R. 35) wherein he says:

> "said action of Edythe H. Stegeman had nothing to do with this action, or the actions of the other six bondholders aforementioned."

Appellant's counsel misconstrue Judge Gregory's statement. What the judge apparently had in mind was that the Stegeman action was for different coupons from the coupons involved in the actions of the Wisconsin bondholders and that the action was solely in the name of Stegeman. Neither respondent nor the Wisconsin bondholders made any claim that the Stegeman action was not based on coupons which they transferred to Stegeman. The only affidavits on the part of the bondholders are those of Mr. Gold (R. 17) and Mr. Karon (R. 23). In neither of said affidavits is it denied that the Stegeman action was on coupons transferred by the Wisconsin bondholders to Stegeman, and Judge Gregory's return stating that the Stegeman action had nothing to do with the Wisconsin actions was merely to show that the Stegeman action was based on different coupons and there was no duplication of actions on the same subject matter.

Appellant's attorneys assumed that the statements contained in the affidavit of Mr. Gold were true and Judge Gregory found that all the statements contained in the affidavits of Mr. Gold and Mr. Karon were true (R. 34). In Mr. Gold's affidavit it is stated that he (Mr. Rupprecht) "thought it would be to the interest of Edythe H. Stegeman *and the bondholders represented by affiant* (the Wisconsin bondholders), to have the entry of such judgment postponed." Therefore, appellant's claim that the Wisconsin actions were only remotely related to the business

which took Mr. Rupprecht to Wisconsin, is not only contrary to the record but contrary to appellant's admissions.

Respectfully submitted,

GOLD and McCANN,
Attorneys for Respondent.

WALTER L. GOLD,
RAY T. McCANN,
MORRIS KARON,
Of Counsel.